IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	SC94927
	)	
DERRICK CARRAWELL,	)	
	)	
Appellant.	)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
DIVISION THIRTEEN,
THE HONORABLE STEVEN R. OHMER,
JUDGE AT TRIAL AND SENTENCING

APPELLANT'S SUBSTITUTE REPLY BRIEF

Srikant Chigurupati
Missouri Bar No. 55287
Assistant Public Defender
1010 Market Street, Ste. 1100
St. Louis, MO 63101
Tel. (314) 340-7662
Fax (314) 340-7685
Email: Srikant.Chigurupati@mspd.mo.gov

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

JURISDICTIONAL STATEMENT

Appellant adopts and incorporates by reference the jurisdictional statement from his substitute brief as if set forth fully herein.

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the statement of facts from his substitute brief as if set forth fully herein.

POINT RELIED ON

I.

The trial court erred and abused its discretion in denying Appellant's "Motion to Suppress Evidence," and in admitting evidence at Appellant's trial that police officers arrested Appellant for violating a St. Louis City ordinance pertaining to peace disturbance, seized a bag he was carrying at the time of his arrest, searched it, and found heroin inside because the officers' actions violated Appellant's constitutionally protected rights to be free of unreasonable searches and seizures, as guaranteed by article one, section fifteen of the Missouri Constitution and the Fourth and Fourteenth amendments to the United States Constitution, in that: a) it is clear that Appellant did not voluntarily abandon the bag and that the officers physically ripped it from him, b) the state failed to show what the St. Louis City ordinance pertaining to peace disturbance says and otherwise failed to show that the officers had probable cause to arrest Appellant for violating its provisions so as to justify their subsequent seizure and search of the bag he was carrying at the time of his arrest, and c) even if the officers lawfully arrested Appellant, the state failed to show that they searched the bag pursuant to lawful authority.

Reply Argument

I. Contrary to Respondent's suggestion that Appellant's "claim on appeal" is not fully preserved, it is.

In *its* substitute response brief, the state argues that a portion of Appellant's "claim on appeal" is not preserved. On appeal, in his substitute brief, Appellant argues,

in part, that the state failed to show what the St. Louis City ordinance pertaining to peace disturbance says and otherwise failed to show that the officers that arrested Appellant had probable cause to arrest him for violating the provisions of that ordinance so as to justify their subsequent seizure and search of the bag he was carrying at the time of his arrest. (Appellant's Substitute Brief 13). In response to this argument, in *its* substitute response brief, the state argues that the portion of Appellant's "claim on appeal" that is directed at the fact that the St. Louis City ordinance pertaining to peace disturbance was not admitted in evidence is not preserved. (Respondent's Substitute Brief 11, 17). In making this argument, the state acknowledges that Appellant's motion to suppress made "a boilerplate allegation that '[t]he search and seizure were not incident to a lawful arrest,'" but asserts that Appellant's trial attorney did not subsequently make any argument that Appellant's arrest itself was unlawful. (Respondent's Substitute Brief 11-12), and that Appellant's trial attorney never argued that the state failed to prove what the provisions of the St. Louis City ordinance pertaining to peace disturbance prohibited. (Respondent's Substitute Brief 13-14). The state's argument ignores material matters of law and fact has no merit whatsoever.

As articulated in Appellant's Substitute Brief, Appellant's claim is fully preserved. (Appellant's Substitute Brief 13-16). It should be noted that in making its argument that Appellant's "claim on appeal" is not fully preserved, the state completely ignores the fact that Appellant's Motion to Suppress alleged that the search of the bag was unlawful in that it was conducted without a warrant, without probable cause, and was not within the scope of any exception to the warrant requirement. (Respondent's Substitute Brief 11-

18). The fact is that Appellant's Motion to suppress alleged that the search of Appellant's bag "was unlawful in that it was conducted without a warrant, without probable cause, and was not within the scope of any exception to the warrant requirement," (L.F. 12-13), AND that "the search and seizure were not incident to a lawful arrest." (L.F. 13). These allegations were sufficient to put the state on notice that Appellant was challenging the legality of Appellant's arrest as well as the subsequent seizure and search of the bag he was carrying at the time of his arrest. Moreover, once these allegations were made, pursuant to the provisions of § 542.296 RSMo, the "burden of going forward with the evidence and the risk of nonpersuasion" fell "upon the state to show by a preponderance of the evidence that the motion to suppress should be overruled." 542.296 RSMo. As such, any argument raised on appeal as to how and why the state failed to carry this burden is fully preserved. As a practical matter, if the state's evidence was insufficient to show by a preponderance of the evidence that Appellant's motion to suppress should be overruled, the trial court erred in not doing so regardless of what Appellant's trial attorney argued.

II. This Court should decline the state's requests to disregard or overlook the fact that the state did not admit a copy of the St. Louis City ordinance pertaining to peace disturbance into evidence.

In its substitute response brief, the state requests this Court to disregard or overlook the fact that the state did not admit a copy of the St. Louis City ordinance pertaining to peace disturbance into evidence and to find that that trial court was free to find that the officers that arrested Appellant had probable cause to believe that he had

violated the provisions of that ordinance. (Respondent's Substitute Brief 32-36). This is not a reasonable request. As articulated in Appellant's Substitute Brief, the law is too well settled that an ordinance may be recognized by a court "only if admitted into evidence or stipulated to by the parties." (see Appellant's Substitute Brief 27-30; Queen of Diamonds, Inc. v. Quinn, 569 S.W.2d 317, 319 (Mo. App. St. Louis Dist. 1978); State v. Furne, 642 S.W.2d 614, 616-617 (Mo. Banc. 1982); State v. Dye, 272 S.W.3d 879, 881-882 (Mo. App. S.D. 2008) (citing City of University City v. MAJ Investment Corp, 884 S.W.2d 305, 308 (Mo. App. E.D. 1994); L---N. H--- v. Wells, 705 S.W.2d 488, 493-494 (Mo. App. W.D. 1985); and Consumer Contact Company v. State of Missouri, Department of Revenue, 592 S.W.2d 782, 785 (Mo. Banc. 1980).

In its substitute brief, the state tries to get around the law by making it seem as though Appellant is to blame for failing to "object" and failing to point out that the state had not admitted the St. Louis City ordinance pertaining to peace disturbance into evidence. Specifically, the state asserts the following:

> "…at no point before, during, or after trial did [Appellant] assert either that he did not violate the city ordinance or that his conduct did not fall within the prohibitions of the ordinance. If [Appellant] had made a timely objection about the ordinance, the State would have been on notice of [Appellant's] claim and had a fair opportunity to admit a copy of the ordinance pursuant to § 490.240 RSMo 2000." [Respondent's Substitute Brief 34].

This argument has no merit.

Pursuant to the provisions of § 542.296 RSMo, once Appellant filed his motion to suppress evidence, the state bore the burden of going forward with the evidence and the risk of nonpersuasion to show by a preponderance of the evidence that the motion to suppress should be overruled. § 542.296 RSMo. The state failed to carry that burden. There was nothing for Appellant to object to. There was simply an utter failure of proof. The state failed to admit the St. Louis City ordinance pertaining to peace disturbance into evidence and thereby failed to prove the existence and content of that ordinance. As such, under the clearly established law of this state, as it has existed for countless years, there was no basis for the trial court to find that the officers that arrested Appellant had probable cause to believe that Appellant had violated the provisions of the St. Louis City ordinance pertaining to peace disturbance. It follows that there was no basis for finding that the officers' subsequent conduct in seizing and searching the bag Appellant was carrying at the time of his arrest was legally justified as a lawful search incident to arrest based on probable cause to believe that Appellant had violated the provisions of the St. Louis City ordinance pertaining to peace disturbance.

It is not Appellant's job to advise the state of the law or to coach the state on how to make out its case. And the state's ignorance of the clearly established law of this state is no defense.

Appellant requests this Court to note that his case is fundamentally different from a case in which a party requests a trial court to take judicial notice of an ordinance and the trial court does so without a proper objection. In the latter situation, there is a waiver by virtue of a failure to raise a valid objection and the ordinance is in evidence and

should be considered by the trial court. (see Rice v. James, 844 S.W.2d 64, 67-68 (Mo. App. E.D. 1993). By contrast, in Appellant's case, the ordinance was never admitted in evidence and cannot be recognized or considered.

In its substitute response brief, the state suggests two ways that the trial court could have found that the officers that arrested Appellant had probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance despite the fact that this ordinance was not admitted into evidence. First, the state suggests that since the officer that arrested Appellant, Officer Burgdorf, had ten years experience as an officer and testified that he arrested Appellant for violating the St. Louis City ordinance pertaining to peace disturbance, the trial court could have assumed/inferred that an officer who had ten years experience, like Officer Burgdorf, would be familiar with local ordinances and would not have arrested Appellant if he did not have probable cause. (Respondent's Substitute Brief 34-35). Second, the state suggests that the trial court could have looked to a 1976 case to see what the ordinance said in 1976 and just assumed that the ordinance probably had not changed all that much. (Respondent's Substitute Brief 35). Appellant submits that the state does not cite to a single case which says that trial courts can do this, requests this Court to note the utter absurdity of these suggestions, and respectfully submits that this Court should dismiss these suggestions as the desperate suggestions of man who does not have the law on his side and realizes that there is a major problem with his case.

III. The officers that arrested Appellant did not have probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance or the Missouri State Statute pertaining to peace disturbance. Moreover, even if those officers mistakenly believed that they had probable cause to arrest Appellant for either of those offenses, that mistake was not objectively reasonable and could not serve to justify the arrest in light of the clearly established precedent of this Court and the Supreme Court of the United States.

In its substitute reply brief, the state asserts that the officers that arrested Appellant had probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance and/or the Missouri State Statute pertaining to peace disturbance. (Respondent's Substitute Brief 23-36). In addition, the state asserts that even if this is not true, the officers that arrested Appellant had a reasonable belief that they had probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance and/or the Missouri State Statute pertaining to peace disturbance. (Respondent's Substitute Brief 23-36). Appellant respectfully submits that the state is wrong on both issues.

First and foremost, the St. Louis City ordinance pertaining to peace disturbance was not admitted in evidence. Hence, as previously argued in Appellant's Substitute Brief and this substitute reply brief, there is no legal basis for finding that the officers that arrested Appellant had probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance. Nor, as set forth below, is there any legal

basis for finding that the officers that arrested Appellant were reasonably mistaken in thinking that they did.

Second, given the facts of Appellant's case and the clearly established precedent of this Court and the Supreme Court of the United States, it is clear that the officers that arrested Appellant did not have probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance or the Missouri state statute pertaining to peace disturbance. In City of St. Louis v. Tinker, this Court held: "that in Missouri it now is and always has been the law that 'breach of the peace' unless otherwise defined in the ordinance or statute using the term, refers only to acts or conduct inciting violence or intended to provoke others to violence." City of St. Louis v. Tinker, 542 S.W.2d 512, 516 (Mo. Banc. 1976). Then in State v. Swodoba, this Court said:

> "The Supreme Court has held that…offensive language can be statutorily prohibited only if it is personally abusive, addressed in a face-to-face manner to a specific individual and uttered under circumstances such that the words have a direct tendency to cause an immediate violent response by a reasonable recipient. *See* Gard, Fighting Words as Free Speech, 58 Wash.U.L.Q. 531, 558-60, 580, (1980). In *Gooding, supra,* the Court stressed that such words must be likely to incite the reflexive response in the person to whom, individually, the remark is addressed. [citing Gooding v. Wilson, 405 U.S. 518, 523 (1972)]. Thirty years before, in *Chaplinsky, supra,* the Court upheld a fighting words conviction in large part because the statute had been construed to do 'no more than prohibit the face-to-face words likely to cause a breach of the peace by the addressee ....'[citing

> Chaplinsky v. New Hampshire, 315 U.S. 568, 573 (1942)]." State v. Swodoba, 658 S.W.2d 24, 26 (Mo. Banc. 1983).

And in State v. Carpenter, this Court, in no uncertain terms, said the following:

> "As stated in State v. Swodoba, 658 S.W.2d 24, 25 (Mo. Banc. 1983) (citing City of St. Louis v. Tinker, 542 S.W.2d 512 (Mo. Banc. 1976) and City of Kansas City v. Thorpe, 499 S.W.2d 454 (Mo. 1973), 'Missouri courts have held that statutes abridging speech are constitutional to the extent that they prohibit only that speech which is likely to incite others to immediate violence.' Thus, the statute must be construed to only prevent 'fighting words.' The Supreme Court has held that such offensive language can be statutorily prohibited only if it is personally abusive, addressed in a face-to-face manner to a specific individual and uttered under circumstances such that the words have a direct tendency to cause an immediate violent response by a reasonable recipient. *See*, Gard, Fighting Words as Free Speech, 58 Wash. U.L.Q. 531, 558-560, 580 (1980) (citing Chaplinksy v. New Hampshire, 315 U.S. 568 (1942)." State v. Carpenter, 658 S.W.2d 406, 408 (Mo. Banc. 1987).

As such, since the mid 1980s, police officers in this state have been on notice that they can only arrest individuals for offensive language if that language is personally abusive, addressed in a face-to-face manner to a specific individual, and uttered under circumstances such that the words have a direct tendency to cause an immediate violent response by a reasonable recipient. State v. Swodoba, 658 S.W.2d at 26 (Mo. Banc. 1983); State v. Carpenter, 658 S.W.2d at 408 (Mo. Banc. 1987).

Ultimately, the clearly established precedent of this Court and the Supreme Court of the United States limits the application of statutes that abridge speech to words that are personally abusive, addressed in a face-to-face manner to a specific individual, and uttered under circumstances such that the words have a direct tendency to cause an immediate violent response by a reasonable recipient. State v. Swodoba, 658 S.W.2d at 26 (Mo. Banc. 1983); State v. Carpenter, 658 S.W.2d at 408 (Mo. Banc. 1987). As such, given the facts of Appellant's case, it is wholly unreasonable to suggest that the officers that arrested Appellant had probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance or the Missouri state statute pertaining to peace disturbance. Appellant's words were not addressed to any specific individual and were not uttered under circumstances such that the words had a direct tendency to cause an immediate violent response by a reasonable recipient. It is critical to note that the words Appellant spoke before being arrested were directed at the several police officers that were on the scene, (Tr. 197), and that when Officer Burgdorf was asked what caused him to actually approach Appellant, Officer Burgdorf responded by saying:

> "**Actually, we're kind of used to being yelled at**. You know, unfortunately a lot of people do not like the police. And the father – what brought me to the point of enough was enough was when the gentleman that I was speaking with grabbed his daughter, he covered her ear with – covered her ear with his hand and then put her head and covered up her other ear with his leg. At that point I was – **it was clear**

to me that he was uncomfortable with his daughter hearing the language that he was speaking." (Tr. 197-198).

Moreover, the record shows that while speaking the words at issue, Appellant was going about his business of parking his car, retrieving his belongings from the passenger seat of his car, and going into his home. (Tr. 160-164, 194-199). On these facts, it cannot be said that Appellant's words were addressed to any specific individual or that they were uttered under circumstances such that the words had a direct tendency to cause an immediate violent response by a reasonable recipient. It is wholly unreasonable to think that police officers would respond to Appellant's conduct by resorting to violence.

Appellant requests this Court to note that in Lewis v. City of New Orleans, the Supreme Court dropped a footnote indicating that the framers of the model penal code were of the opinion that "even 'fighting words' as defined by Chaplinsky should not be punished when addressed to a police officer trained to exercise a higher degree of restraint than the average citizen." Lewis V. City of New Orleans, 414 U.S. 130, 132 at footnote 2 (U.S. 1974). Appellant also requests this Court to note that in his concurring opinion in that case, Mr. Justice Powell noted that:

> "…words may or may not be 'fighting words,' depending upon the circumstances of their utterance. It is unlikely, for example, that the words said to have been used here would have precipitated a physical confrontation between the middle-aged woman who spoke them and the police officer in whose presence they were uttered. The words may well have conveyed anger and frustration without provoking a violent reaction from the officer. Moreover, as noted in my previous

concurrence, a properly trained officer may reasonably be expected to 'exercise a higher degree of restraint' than the average citizen, and thus be less likely to respond belligerently to 'fighting words.'" Lewis V. City of New Orleans, 414 U.S. at 135.

As for the state's arguments that the officers that arrested Appellant could have been reasonably mistaken in thinking that they had probable cause to arrest Appellant for violating the St. Louis City ordinance pertaining to peace disturbance or the Missouri state statute pertaining to peace disturbance, they are misplaced. The St. Louis City ordinance pertaining to peace disturbance was not admitted in evidence. Hence, there is no reasonable basis for finding that the officers were reasonably mistaken in thinking that they had probable cause to arrest Appellant for violating its provisions. In addition, there is no evidence that the officers that arrested Appellant arrested him for violating the Missouri state statute pertaining to peace disturbance. As articulated in Appellant's Substitute Brief, Officer Burgdorf flat out said that Appellant was arrested for violating the St. Louis City ordinance pertaining to peace disturbance. (Appellant's Substitute Brief 19, Tr. 222). He never claimed to have arrested Appellant for violating any other provision of law. Hence, it makes no sense to find that the officers that arrested Appellant were reasonably mistaken in thinking that they had probable cause to arrest him for violating the Missouri state statute pertaining to peace disturbance. There is simply no evidence that they actually had such a mistaken belief. Therefore, it is makes no sense to claim that they did have such a mistaken belief and that it was reasonable.

Regardless, given the facts of Appellant's case and this Court's holdings in State v. Tinker, State v. Swodoba, and State v. Carpenter, no police officer could have reasonably held a mistaken belief that they had probable cause to arrest Appellant for violating the St. Louis City ordinance pertaining to peace disturbance or the Missouri state statute pertaining to peace disturbance. In its Substitute Response Brief the state cites to Heien v. North Carolina, 135 S.Ct. 530, 536 (2014) and tries to use that case to support its mistaken belief argument. (Substitute Response Brief 28-29). The state's reliance on Heien v. North Carolina is misplaced. That case is factually distinguishable from Appellant's case because in that case there was no controlling precedent that made it objectively unreasonable for the arresting officer in that case to think that he had probable cause to arrest the Heien defendant for violating the statute at issue in that case. (see Heien v. North Carolina, 135 S.Ct. at 533) (holding that "[a]lthough the State Court of Appeals held that 'rear lamps' do not include brake lights, the word 'other,' **coupled with the lack of state-court precedent interpreting the provision**, made it objectively reasonable to think that a faulty brake light constituted a violation.") In contrast, in Appellant's case, there was controlling precedent (State v. Tinker, State v. Swodoba, and State v. Carpenter) that made it objectively unreasonable for the officers that arrested Appellant to think that they had probable cause to arrest him for violating the St. Louis City ordinance pertaining to peace disturbance or the Missouri state statute pertaining to peace disturbance. Under the law, as noted in Heien v. North Carolina, "[t]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable." Id. at 539.

IV. This Court should reject the state's contention that even if the officers did not have probable cause to arrest Appellant for any other laws violations, they did have probable cause to arrest him for resisting arrest.

In its substitute response brief, for the first time, the state argues that the officers that arrested Appellant had probable cause to arrest him for resisting arrest. (See Respondent's Substitute Brief 30-32). This Court should not entertain this argument as no officer ever testified that there was probable cause to believe that Appellant was resisting arrest and because no one made the argument to the trial court or to the Missouri Court of Appeals for the Eastern District and is being made for the first time to this Court. As such, this Court should question whether this argument is rooted in reality and deem the argument unpreserved given that, pursuant to the provisions of § 542.296 RSMo, the burden was on the state to establish that the motion to suppress should be overruled.

In the alternative, this Court should find that the state failed to prove that the officers that arrested Appellant had probable cause to arrest him for committing the crime of resisting arrest pursuant to the provisions of § 575.150 RSMo. In its Substitute Response Brief, the state claims that the officers that arrested Appellant had probable cause to arrest him for resisting arrest pursuant to the provisions of § 575.150 RSMo. (See Respondent's Substitute Brief 30-32). However, the provisions of § 575.150 only apply when someone resists arrest for any crime, infraction, or ordinance violation. § 575.150.2 RSMo; State v. Redifer, 215 S.W.3d 725, 730-735 (Mo. App. W.D. 2007); State v. Furne, 642 S.W.2d 614, 616 (Mo. Banc. 1982). Hence, in order to show that

Officer Burgdorf had probable cause to arrest Appellant pursuant to the provisions of § 575.150 RSMo, the state needed to show that Appellant resisted arrest for a crime, infraction, or ordinance violation. § 575.150.2 RSMo; State v. Redifer, 215 S.W.3d 725, 730-735 (Mo. App. W.D. 2007); State v. Furne, 642 S.W.2d 614, 616-617 (Mo. Banc. 1982).

The state failed to do that. As articulated in Appellant's Substitute Brief, Officer Burgdorf testified that he attempted to arrest Appellant for violating the St. Louis City ordinance pertaining to peace disturbance, (Appellant's Substitute Brief 19, Tr. 222), and did not testify that he attempted to arrest Appellant for any other crime, infraction, ordinance violation. Moreover, the state failed to admit any ordinance pertaining to peace disturbance into evidence. As such, the record is devoid of evidence that peace disturbance is illegal or that it is an actual ordinance. State v. Redifer, 215 S.W.3d 725, 730-735 (Mo. App. W.D. 2007); State v. Furne, 642 S.W.2d 614, 616-617 (Mo. Banc. 1982). Absent proof of the existence and content of any peace disturbance ordinance upon which Officer Burgdorf was relying when he arrested Appellant, the state failed to prove that Appellant resisted arrest for any crime, infraction, or ordinance violation. § 575.150.2 RSMo; State v. Redifer, 215 S.W.3d 725, 730-735 (Mo. App. W.D. 2007); State v. Furne, 642 S.W.2d 614, 616-617 (Mo. Banc. 1982). In turn, the state failed to show that there was probable cause to arrest Appellant for that offense.

Moreover, when Officer Burgdorf placed his hands on Appellant, he was acting unlawfully. This is because as set forth in Appellant's Substitute Brief and this Substitute Reply Brief, Officer Burgdorf did not have probable cause to arrest Appellant when he

placed his hands on him. As such, when Officer Burgdorf placed his hands on Appellant, Officer Burgdorf was subjecting Appellant to an unreasonable seizure. And even if the record is somehow sufficient to show that Appellant resisted that arrest within the meaning of § 575.150 RSMo, that "resistance" was simply a closely connected and direct reaction to the unreasonable seizure and did not serve to dissipate the taint of Officer Burgdorf's unreasonable seizure and attenuate it from the subsequent search of the bag Appellant was carrying at the time of his arrest. Wong Sun v. United States, 371 U.S. 471, 486 (1962); Brown v. Illinois, 422 U.S. 590, 597-605 (1975); Dunaway v. New York, 442 U.S. 200, 216-219 (1979). As such, this Court should apply the doctrine of attenuation and find that the officers unlawfully seized and searched the bag Appellant was carrying at the time of his arrest. Wong Sun v. United States, 371 U.S. 471, 486 (1962); Brown v. Illinois, 422 U.S. 590, 597-605 (1975); Dunaway v. New York, 442 U.S. 200, 216-219 (1979).

V. Regardless of anything else, this Court should find that Appellant was lawfully secured in handcuffs in the backseat of a police vehicle with four officers on the scene when the police searched the bag he was carrying at the time of his arrest and that as a result, the search of the bag could not be justified as a lawful search incident to arrest.

Appellant maintains that pursuant to the principles enunciated in United States v. Chadwick, 433 U.S. 1, 15 (1977) and State v. Dudley, 561 S.W.2d 403, 405-407 (Mo. App. K.C. Dist. 1977), the search of Appellant's bag was not a lawful search incident to arrest. This is because Appellant was secured in handcuffs in the backseat of a police

vehicle with four officers on the scene when the police searched that bag. In State v. Dudley, the Missouri Court of Appeals for the Kansas City District said:

> "Searches of the person need not be confined to the place and time of the arrest but may be delayed to a subsequent time and place; but searches of other possessions incident to arrest can no longer be conducted after the point when the officers have reduced those possessions to their exclusive control." State v. Dudley, 561 S.W.2d at 406.

CONCLUSION

WHEREFORE, for the reasons set forth in this substitute reply brief and in Appellant's substitute brief, Appellant requests this Court to find that the trial court clearly erred in denying Appellant's "Motion to Suppress Evidence," to vacate the sentence and judgment in this case, and to discharge Appellant.

Respectfully submitted,

/s/Srikant Chigurupati
Srikant Chigurupati
Missouri Bar #55287
Assistant Public Defender
1010 Market Street, Ste. 1100
St. Louis, MO 63101
(314) 340-7662 ext. 229
Srikant.Chigurupati@mspd.mo.gov

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2015, an electronic version of this brief was sent via electronic mail to the Court and to Mr. Shaun Mackelprang, Office of the Attorney General.

/s/Srikant Chigurupati
Srikant Chigurupati

CERTIFICATE OF COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify I signed the original copy of this brief, that this brief conforms with Rule 84.04, that this brief contains all the information required by Rule 55.03, and that this brief complies with the limitations contained in Rule 84.06(b). This brief was prepared with Microsoft Word for Windows, uses Times New Roman 13 point font, and does not exceed 27,900 words. The word-processing software identified this brief as containing 5,327 words and 24 pages including the cover page, signature block, and certificates of service and of compliance.

/s/Srikant Chigurupati
Srikant Chigurupati
Missouri Bar #55287
Assistant Public Defender
1010 Market Street, Ste. 1100
St. Louis, MO 63101
(314) 340-7662 ext. 229
Srikant.Chigurupati@mspd.mo.gov

Attorney for Appellant